IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1840 of 1994

For Approval and Signature:

HON'BLE MR. JUSTICE ANANT S DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RASULKHAN S PATHAN

Versus

STATE BANK OF INDIA

Appearance:

1. Special Civil Application No. 1840 of 1994

MR BIPIN I MEHTA for Petitioner No. 1

Mr. Kunal Naik for M/S TRIVEDI & GUPTA

for Respondent No. 1-2

CORAM : HON'BLE MR. JUSTICE ANANT S DAVE

Date of decision: 18/12/2004

ORAL JUDGEMENT

1. This petition under Article 226 of the Constitution of India is filed by the petitioner for claiming pensionary benefits from the respondents on the ground that the petitioner was eligible and entitled to get pensionary benefits from the respondent-Bank and it is further prayed to direct the respondents to grant arrears of the said pensionary benefit from the date of his retirement.

2. It is the case of the petitioner that the petitioner had joined the service of the respondent-Bank as part-time sweeper and performed his duties as such from 1.12.1962 to 30.6.1967 and, thereafter, from 1.7.1967 to 15.2.1997 as Badli Watchman. The petitioner was permanently absorbed on 16th February 1971, according to the petitioner, in the regular establishment, and had worked on the post of watchman on permanent basis from 16.2.1971 to 31.5.1992. Accordingly, it is claimed that the petitioner had served with the respondent-Bank for about 32 years without any break and, therefore, the total period of pensionable service, according to the petitioner, is 32 years and the petitioner is entitled to pensionary benefits available under the Rules. After attaining superannuation on 31.5.1990, the petitioner was given extension of service for a period of two years and, finally, the petitioner retired from service of the respondent-Bank on 31st May 1992, on completion of 60 years.

3. Subsequently, the petitioner filed a draft amendment in the present writ petition challenging Rules 8(c) and Schedule XIII(ii) of the Rules framed by the respondent-Bank governing the field of pension, as ultra vires and contrary to the provisions of the Constitution of India. Rule 8(c) and Schedule XIII(ii) read as under:

> "8 Save as provided in rule 25, no employee shall be eligible to become a member of the fund:
> (c) if he is over 38 years of age;
>
> XIII(ii)For State Bank of India:
>
> A workman shall normally retire on reaching the age of 58 years. The Bank will, however, grant to a workman who continues to be physically fit and efficient an extension of service upto 60 years of age, but service beyond 58 years of age will not be counted for any purpose with or in relation to pension."

The abovementioned Rules are challenged by the petitioner as ultra vires Article 14 of the Constitution of India on the ground that it is contrary to the public policy and the condition as to qualifying service for pension to the employees, like the petitioner, frustrates the very purpose of the scheme of pension, and, the petitioner, who had, initially joined the service of the respondent-Bank as part-time sweeper and performed his duties as such from 1.12.1962 to 30.6.1967 and, thereafter, from 1.7.1967 to 15.2.1997 as Badli Watchman, thus, completing the total tenure of service of about 32 years, is deprived of the pensionary benefits.

4. The learned advocate for the petitioner, Mr. Bipin Mehta, has contended that the petitioner was in continuous service of the respondent-Bank since 1.12.1960 till he retired on 31.5.1992 i.e. on extended service of two years, after his actual date of superannuation. According to Mr. Mehta, the learned advocate for the petitioner, the period of initial service, i.e. from 1.12.1960 to 30.6.1967 as part-time sweeper and the period from 1.7.1967 to 15.2.1997 as Badli Watchman, is also required to be taken into consideration along with his permanent absorption on regular post with effect from 16.2.1971 till the final date of his retirement, and the extension of the service for the period of two years from the date of superannuation is also required to be considered and, therefore, the petitioner is required to be declared as eligible and entitled to have the pensionary benefits as per the Rules. Learned advocate Mr. Mehta has vehemently contended that denial of the pensionary benefits to the petitioner by taking resort to Rule 8(c) and Schedule XIII(ii) by the respondent-Bank is nothing, but, a case of unreasonable and arbitrary exercise of power, and to receive pension by a retired employee from the employer is a legal right, and not a grace shown by the employer. Therefore, the shelter taken by the respondent-Bank of non-completion of 20 years of pensionable service by the petitioner is unreasonable in as much as the period of service rendered by the petitioner from 1.12.1960 to 30.6.1967 as part-time sweeper and the period from 1.7.1967 to 15.2.1997 as Badli Watchman is not considered by the respondent-Bank, and the only period from the date of absorption on regular post i.e. 16.2.1971, till the date of superannuation i.e. 31.5.1990, is considered by the respondent-Bank. This action of the respondent-Bank denying the pensionary benefits to the petitioner is required to be quashed and set aside by this Court in exercise of its power under Article 226 of the

Constitution of India.

4.1 Learned advocate Mr. Mehta, appearing for the petitioner, has relied upon the judgment of this Court, in the case of S.H. Sanghvi vs. State of Gujarat, reported in 1986 GLH p.250, in support of his argument, that on completion of ten years of pensionable job, the employees are entitled to receive pensionary benefits. It is contended by the learned advocate for the petitioner, by placing reliance on the judgment of the Apex Court in the case of R.K.Gupta vs. Union of India, reported in 1988 1 LLJ p.451, that, in the given case, the employee of the ESI Corporation was given the benefits of past service rendered in the Central Government for considering the same towards pensionary service, and the benefit was given. According to Mr. Mehta, learned advocate for the petitioner, the respondent-Bank is also required to be directed to consider the earlier service rendered by the petitioner as part-time sweeper and badli watchman prior to his regular absorption in service from 1971.

5. Mr. Kunal Naik, learned advocate for M/s. Trivedi & Gupta, appearing for the respondents, has submitted that the service rendered by the petitioner as part-time sweeper from 1.12.1962 to 30.6.1967 and, thereafter, from 1.7.1967 to 15.2.1997 as Badli Watchman, cannot be counted for the purpose of pension, since the petitioner was not appointed at that time in the regular establishment in accordance with the Rules for recruitment. The petitioner was permanently taken as a regular watchman in the establishment of the respondent-Bank with effect from 16.8.1971 and continued to serve as such till the age of his superannuation on completion of 58 years, i.e. 31.5.1990, and, as per the decision of the respondent-Bank, looking to the satisfactory service and physical fitness of the petitioner, he was allowed to serve for further two years and, finally, the petitioner had retired from service on 31.5.1992. Therefore, according to Mr. Kunal Naik, learned advocate for the respondents, the petitioner had not completed 20 years of service with the respondents, as required under the relevant Rules and as per the terms of settlement arrived at between the parties.

5.1 The claim of the petitioner is resisted by Mr. Naik, learned advocate for the respondents, contending that it is true that the pension is not a bounty, but a benefit available under the Rules. In the present case, the petitioner is not entitled to the pensionary benefits as per the Rules framed by the Bank and, therefore, no

legal right accrues in favour of the petitioner for claiming the benefit under the Rules or the settlement arrived at between the parties. Mr. Kunal Naik, learned advocate for the respondents, has drawn the attention of this Court to the provisions of Rule 8(c) and Chapter XI, XII and XIII with regard to age of retirement and pension. It is submitted that, as per the Rules, the respondent-Bank has discretion to grant an extension of service to an employee on reaching the age of 58 years, for a period of two years upto 60 years of age, but service beyond 58 years of age will not be counted for any purpose connected with or in relation to pension.

5.2 Mr. Kunal Naik, learned advocate for the respondents, has further submitted that the case laws cited by the learned advocate for the petitioner, more particularly, S.H. Sanghvi (supra) [1986 GLH p.250], are not applicable to the respondent-Bank in view of the fact that the Bank has its own Rules governing the field of pension of its employees and even the settlement arrived at between the parties clearly lays down the policy of the Bank, as agreed. Mr. Kunal Naik, learned advocate for the respondents, has further submitted that the aforesaid judgment pertains to interpretation of Rule 327 of Bombay Civil Services Rules and in paragraph 7, it is observed Court that, if new service is pensionable the government servant is entitled to combine it with previous service and whole to be treated as one service for the purpose of pension notwithstanding that new service is not in continuation of previous service and that there is break between the two services. It is submitted by the learned advocate Mr. Naik that the facts of the present case are totally different and the case law cited by the learned educate for the petitioner, reported in 1986 GLH 250, is not applicable to the case of the petitioner. Mr. Naik has also relied upon the judgment of the Supreme Court in the case of Commander Head Quarter, Calcutta and Others vs. Capt. Biplabendra Chanda, reported in AIR 1997 Supreme Court p.2607, where the Apex Court held that if an employee is not granted pension being not eligible as per the Rules in force on the date of his retirement, such action of the Authority cannot be said to be arbitrary or discriminatory in any manner or violative of Article 14 of the Constitution of India. According to Mr. Naik, the petitioner is not entitled to the pensionary benefits under the Rules framed by the respondent-Bank and even as per the settlement arrived at between the parties.

5.3 Mr. Kunal Naik, learned advocate for the respondents, has vehemently submitted that the Rule 8(c)

and Schedule XIII(ii) cannot be said to be ultra vires Article 14 of the Constitution of India on the ground that the same is opposed to public policy or, in any manner, it frustrates the scheme of pension. According to Mr. Naik, the respondent-Bank has, within its domain, power to frame Rules and Regulations with regard to the pensioner benefits to its employees, and no illegality or arbitrariness can be presumed if the Rules prescribe eligibility criteria to avail the benefit of pension, and, even fixation of minimum years of pensionable job of 20 years by the Bank for grant of pension to the employees, cannot be said to be unreasonable or discriminatory or violative of Article 14 of the Constitution of India.

6. Having heard the learned advocates for the parties and having gone through the record of the case, in my opinion, there is no merit in the submissions of the learned advocate for the petitioner. It is admitted position of fact that initially petitioner had worked with the respondent-Bank as part-time sweeper and performed his duties as such from 1.12.1962 to 30.6.1967 and, thereafter also, from 1.7.1967 to 15.2.1997 as Badli Watchman. The appointment of the petitioner as regular watch in the permanent establishment of the respondent-Bank, according to Mr. Mehta, learned advocate for the petitioner, took place with effect from 16.2.1971 and the petitioner had continued to serve as such till his date of his superannuation, i.e. on 31st May 1990 and, thereafter, extension of a period of two years was given by the respondent-Bank and, finally, the petitioner retired from service of the respondent-Bank on 31st May 1992. No case is made out by the petitioner to establish that the earlier services rendered by the petitioner as part-time sweeper, thereafter, as badli watchman, can also be considered for working out the qualifying service required for earning pensionary benefits under the provisions of the Rules and Regulations of the Bank or under the settlement arrived at between the employees and the respondent-Bank. At any point of time during the tenure of service till the date of retirement, no representation or demand was made to the respondent-bank to treat the period of service rendered by the petitioner as part-time sweeper and, thereafter, as badli watchman, as regular service and to consider the said period towards pensionable service under the Rules and Regulations of the Bank. So far as the eligibility criterion for availing of pension is concerned, the Rules of the respondent-Bank provide for minimum period of 20 years of service and it is specifically provided in Chapter XI and XII about the age

of retirement and grant of pension, which clearly excludes extended period of service after the date of superannuation, and the same is not to be counted for any purpose connected with or in relation to pension. Even Rule 22(i)(a) provides for eligibility criterion of an employee for pension on retiring from the Bank's services. It provides that after having completed twenty years' pensionable service provided that he has attained the age of fifty years. In the present case, the petitioner does not fulfil the aforesaid criterion. Rule 8(c) also provides that no employee shall be eligible to become a member of the fund if he is over 38 years of age. According to the respondents, as per the record available, the petitioner did not fulfil even this criterion also.

7. The challenge to vires of Rule 3(c) and Schedule XIII(ii) made by the petitioner on the ground of public policy also cannot be accepted, in as much as the concerned Authority is free to frame rules pertaining to pension as per the administrative requirement and no interference is called for unless it is palpably arbitrary or discriminatory. In the present case, providing minimum 20 years of pensionable job for claiming eligibility to receive pension by the respondent-Bank cannot be said to be arbitrary or unreasonable or discriminatory. It is unfortunate that, during the active service tenure of the petitioner, at no point of time, the grievance was made to the respondent-Bank to grant continuity of temporary service rendered by the petitioner from 1960 to 1971 as part-time sweeper and badli watchman. As rightly pointed out by the learned advocate for the respondents, Mr. Kunal Naik, the judgment of this Court, reported in 1986 GLH 250, is pertaining to the interpretation of Rule 327 of the BCSR, which is applicable to the employees of the State of Gujarat, and no analogy in either way can be drawn, which can be helpful to the petitioner. The facts of that case are totally different and the same are not helpful to the petitioner. As laid down by the Apex Court in the case of Commander Head Quarter, Calcutta and Others vs. Capt. Biplabendra Chanda, reported in AIR 1997 SC 2607, unless Rules provide for pension, the benefits of pension cannot be extended or scope can be enlarged by the Court in exercise of power under Article 226 of the Constitution of India.

8. In view of the discussion made hereinabove, the challenge to vires of Rule 8(c) and Schedule XIII(ii) fails, as the same are not arbitrary or unreasonable or contrary to the public policy. As pointed out

hereinabove, the case of the petitioner does not fall within the parameters of the pensionable scheme framed by the respondent-Bank in view of the fact that the petitioner had not rendered the qualifying service for pension as watchman for a period of 20 years with the respondent-Bank.

9. In the result, the petition fails and is rejected. Rule is discharged with no order as to costs.

(Anant S. Dave, J.)
(swamy)